Alexander Bistritzky and Service Employees International Union, Local 32E, AFL-CIO, Petitioner. Case 2-RC-21772

April 24, 1997

## DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On December 13, 1996, the Regional Director for Region 2 issued a Decision and Direction of Election in which he found that Alexander Bistritzky is an employer of five employees comprising the petitioned-for unit of service and maintenance employees working in the following buildings located in New York, New York: 729 West 186th Street, 739 West 186th Street, and 10 Overlook Terrace. Because of his finding that Bistritzky is "an employer," and because the Petitioner did not name the owners of each building in the petition (Hudson View Realty, LLC.: 729 West 186th Corp.; and 10 Overlook Realty, LLC), the Regional Director found it unnecessary to reach the Petitioner's argument that the Employer and the building owners are a single employer. Although the Employer admitted that it was a joint employer with the owner of each building, the Regional Director rejected the Employer's contention that an issue is raised under Greenhoot, Inc., 205 NLRB 250 (1973). The Regional Director also found that the petitioned-for unit is an appropriate unit.

Thereafter, the Employer filed a timely request for review of the Regional Director's decision, arguing that the Regional Director's decision is contrary to *Greenhoot* and, further, that this case should have been submitted directly to the Board for decision because of the Board's current consideration of *Value Recycle*, Case 33–RC–4042, in which oral argument was held on December 2, 1996. The Employer also contended that only separate units at each location are appropriate.

On January 15, 1997, the Board issued a Notice to Show Cause why the Board should not find, based on the Advisory Opinion in Alexander Bistritzky, 322 NLRB 206 fn. 1 (1996), and the record in this case, that the Employer and Hudson View Realty LLC, 729 West 186th Corp., and 10 Overlook Realty LLC are a single employer. The Employer filed a response. After carefully reviewing the record and the Employer's response to the Notice to Show Cause, we find that the Employer is a single employer with these three corporate entities.

In determining whether one or more entities are a single employer, the Board examines the following factors: (1) common ownership; (2) interrelation of operations; (3) common management; and (4) centralized control of labor relations. *Denart Coal Co.*, 315 NLRB

850, 851 (1994), enfd. 64 F.3d 661 (4th Cir. 1995). Not all of these criteria need to be present and a significant factor is the absence of an "arm's length relationship found among unintegrated companies." Id. at 851, citing Operating Engineers Local 627 v. NLRB, 518 F.2d 1040, 1046 (D.C. Cir. 1975), affd. in pertinent part sub nom. South Prairie Construction Co. v. Operating Engineers Local 627, 425 U.S. 800 (1976).

All three buildings in issue are owned by Bistritzky with members of his immediate family. There also is no dispute that as the managing agent, Bistritzky manages all three buildings. Moreover, his children and his wife assist in managing the buildings. Labor relations decisions for all three buildings are centrally controlled by Bistritzky. Although Bistritzky testified that he consults with other owners regarding these decisions, he also testified that he is an "interested party" in these decisions and that his suggestions usually are followed. Bistritzky further testified that he discusses "whatever comes up" with the owners and then "we" come to a conclusion regarding what to do.

Operations of the three buildings are significantly interrelated. There is regular interchange among superintendents at the three buildings. Superintendents assist or "cover" for each other when it is busy at a particular building or when a building superintendent is on vacation or is ill. In addition, one of the two porters in the unit works daily at both the 739 West 186th Street and 10 Overlook Terrace locations. Bistritzky directs the work of employees at all three buildings and visits the buildings three to four times per week. He also has authority to sign checks on behalf of all three corporations. A single accountant handles the bookkeeping for all three buildings, although each corporation has a separate bank account and tax identification number.

Based on the forgoing facts and application of the relevant factors cited above, we find that Alexander Bistritzky and the three corporate entities which own the three buildings are a single employer. Common management exists by virtue of Bistritzky's duties as managing agent for all three buildings. There also is substantial interrelation of operations, including interchange of employees and common direction of employees. Labor relations decisions are centrally controlled by Bistritzky. The Employer notes that Bistritzky is the majority shareholder in only one of the three buildings and that the majority shareholders in the other buildings make labor relations decisions. But Bistritzky holds an interest in every building and

<sup>&</sup>lt;sup>1</sup> Bistritzky owns 90 percent, and his wife 10 percent, of the shares of 729 186th Street Corp., which owns 729 West 186th Street. Bistritzky owns 10 percent, and his wife owns 90 percent, of the shares of 10 Overlook Terrace, which owns the building at the location of the same name. Hudson View Realty, LLC, owns 739 West 186th Street. Bistritzky owns 10 percent of the Hudson View shares; his three children own the remaining shares equally.

the shareholders he consults with are members of his immediate family—his wife and his children. Further, his family is involved in the operation and management of the buildings. It is apparent that the companies' relationship is a close family one rather than one between independent companies dealing at "arm's length." In these circumstances the Board often treats ownership by other family members as personal ownership. See *Truck & Dock Services*, 272 NLRB 592 fn. 2 (1984); *Bryar Construction*, 240 NLRB 102, 104 (1979). Given the common management, centralized control of labor relations, interrelation of operations,

and close family connection, we find that Alexander Bistritzky and the corporations Hudson View Realty LLC, 729 West 186th Corp., and 10 Overlook Realty LLC are a single employer. See Archy L. Heady Funeral Home, 271 NLRB 819, 823 (1984); Truck & Dock Services, supra.<sup>3</sup>

With regard to the Regional Director's unit finding, we deny the Employer's request for review as it raises no substantial issues warranting review.

Accordingly, this case is remanded to the Regional Director for Region 2 for further appropriate action.

<sup>&</sup>lt;sup>2</sup> In its earlier request for an advisory opinion concerning the Board's jurisdiction over the Employer, the Employer argued then that Alexander Bistritzky is the "sole shareholder of all three buildings." See *Alexander Bistritzky*, supra. The Employer's apparent change in position raises an estoppel issue which we find unnecessary to reach in view of our single-employer finding.

<sup>&</sup>lt;sup>3</sup> As all the employees in the petitioned-for unit are employed by a single employer, the Employer's citation of *Greenhoot*, supra, is inapposite. In that case, the management company and each building owner constituted a joint employer at each building. The owners were not a single employer with the management company or with each other. In the instant case, the management company and all the building owners are a single employer.